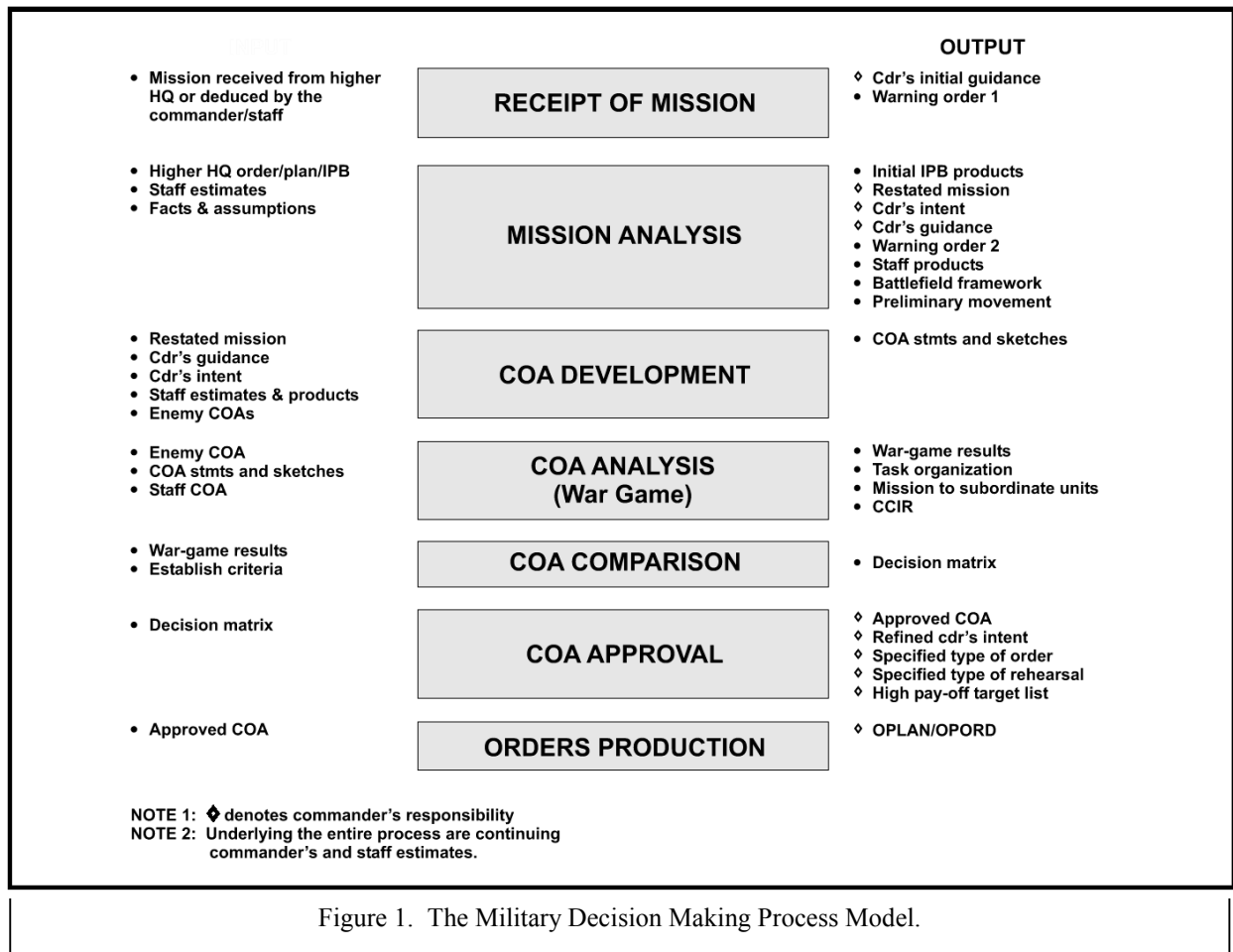


CHAPTER 27

THE MILITARY DECISION MAKING PROCESS AND OPERATION PLANS

OPERATIONS PLANS AND ORDERS IN THE ARMY ARENA

The military decision-making process (MDMP) is a single, established, and proven analytical process. (Figure 1). The MDMP is an adaptation of the Army's analytical approach to problem solving. The MDMP is a tool that assists the commander and staff in developing estimates and a plan. The ultimate goal of the MDMP is to produce a comprehensive, clear, and concise operations order. The judge advocate must be involved in every aspect of the MDMP process. Judge advocates should become involved in the Plan Development process and not merely in the Plan Review stage. Participation in the Plan Development process enables judge advocates to prevent the inclusion of legally questionable actions into the OPLAN. The judge advocate can accomplish this by his/her participation in the Operational Planning Group or OPG, where the Legal Advisor provides direct input into the decision-making process, along with other coordinating and special staff officers and subject matter experts.



The Operational Planning Group will vary in size and composition depending on the complexity of the operation and the unit size. The key players in the brigade TF OPG will be the brigade S-3 (operations officer), the brigade S-2

(intelligence), the brigade fire support officer (FSO), and the brigade logistics officer (S-4). These officers are primarily responsible for taking the brigade commander's intent and producing a workable, thorough operation order. There are other important members of the planning cell, usually a representative from each of the battlefield operating systems (BOS) and perhaps Air Force, ANGLICO and allied and SOF liaisons, and of course the brigade trial counsel. These supporting members of the OPG all take an active part in the planning process and have the responsibility of assisting the key players in fulfilling the commander's intent. Significantly, all these officers have other crucial duties in the brigade besides working in the planning cell. The OPG comes together upon the receipt of the warning order from the higher headquarters, produces the order and then goes into the execution phase.

The OPG at the division level or higher will usually be of such importance as to consist of officers and NCOs who have the OPG as their primary duty. Often the OPG will be called a Battle Management Cell (BMC) or the Future Plans Group (FPG). The operational law attorney at the division level will work with the individuals who make up the BMC on a daily basis. The relationship between the judge advocate and the officers who make up this planning cell is as crucial as the judge advocate's knowledge on relevant legal issues.

Operational Law Concerns in Plans and Orders. By participating in the MDMP process, judge advocates can review plans and mission orders to determine if: (a) law of war issues have been addressed, (b) legally and practically sufficient rules of engagement have been defined, and (c) other necessary legal issues have been adequately discussed. Law of War issues weave between the targeting annex, the movement plans, and the Fire Support Plan. The best advice for judge advocates is to remain fully engaged in the process as the staff discusses and develops the plan. The judge advocate must know the law, and be alert to operational issues that raise the potential for violating the Law of War. Every OPLAN will address many other OPLAW issues, such as criminal jurisdiction and claims, refugee flows, riot control agents, command and control, fiscal law, etc. The Legal Annex is the focal point for the judge advocate to capture guidance on policy matters that are contained in other annexes throughout the plan. The judge advocate will be responsible for producing a Legal Annex that is consistent with the remainder of the plan.

Receipt of Mission: The decision-making process begins with the receipt or anticipation of a new mission. As soon as a new mission is received, the unit's operations section issues a warning order to the staff alerting them of the pending planning process. Unit SOPs identify who is to attend and where they should assemble. The staff (which includes the judge advocate) prepares for the mission by gathering the tools needed to do mission analysis. These include –

- Higher headquarters order or plan
- Map of the area of operations
- Appropriate FMs
- Any existing staff estimates
- Both own and higher headquarters SOPs.

The judge advocate must also prepare for the upcoming Mission Analysis by having the proper resources. These include:

- A copy of the current ROE with any changes and any requests for changes
- A copy of relevant SOFA or relevant local law in the anticipated AO
- A copy of the legal Annex
- FM 27-10, DA Pam 27-1, and DA Pam 27-1-1.

The critical decision made during the receipt of mission is the allocation of available time. The commander must provide guidance to subordinate units as early as possible to allow subordinates the maximum time for their own planning and preparation for operations. As a general rule, the commander allocates a minimum of two-thirds of available time for

subordinate units to conduct their planning and preparation. This leaves one-third of the time for the commander and his staff to do their planning.

Mission Analysis: Mission analysis is crucial to the MDMP. It allows the commander to begin his battlefield visualization. The result of mission analysis is defining the tactical problem and beginning the process of determining feasible solutions. It consists of 17 steps, not necessarily sequential, and results in the staff formally briefing the commander. The judge advocate has an important role in each of the steps:

- Step 1. Analyze the higher headquarters' order.
- Step 2. Conduct initial intelligence preparation of the battlefield (IPB).
- Step 3. Determine the specified, implied, and essential tasks.
- Step 4. Review available assets.
- Step 5. Determine constraints.
- Step 6. Identify critical facts and assumptions.
- Step 7. Conduct risk assessment.
- Step 8. Determine initial commander's critical information requirements (CCIR).
- Step 9. Determine the initial reconnaissance annex.
- Step 10. Plan use of available time.
- Step 11. Write the restated mission.
- Step 12. Conduct a mission analysis briefing.
- Step 13. Approve the restated mission.
- Step 14. Develop the initial commander's intent.
- Step 15. Issue the commander's guidance.
- Step 16. Issue a warning order.
- Step 17. Review facts and assumptions.

Significant legal issues will arise during each of the above steps. The judge advocate must ask the difficult questions of the plans officer leading the Mission Analysis to ensure that all relevant legal concerns are worked into the plan. **The Joint Operations Planning and Execution System (JOPES) checklist at the end of this chapter provides a useful checklist of legal issues which commonly arise.** Above all else, by actively participating in the mission analysis phase of orders development, the judge advocate will become intimately familiar with the operation's parameters.

Course of Action Development: After receiving guidance, the staff develops COAs for analysis and comparison. The commander must involve the entire staff in their development. His guidance and intent focus the staff's creativity to produce a comprehensive, flexible plan within the time constraints. Typically the staff will develop at least two, and as many as five, different courses of action for the commander to consider.

The judge advocate must know the legal advantages and disadvantages of each of the COAs and be ready to brief them if required. For example, COA 1 may involve bypassing a major urban area and subsequently using indirect fire on enemy

forces defending the city. COA 2 might involve the destruction of an enemy dam in order to flood a likely enemy counterattack axis of advance. COA 3 might use FASCAM mines to achieve the same end. Each of the COAs present unique legal issues which the judge advocate must be prepared to brief to the commander in a simple advantage/disadvantage style.

Most staffs use a synchronization matrix during the COA development. At the top of the matrix is an H hour sequence (H+2, H+6 etc.) which provides a common time reference for all phases of the operation (Figure 2). The first column on the left usually contains the BOSs (maneuver, ADA, fire support, IEW, engineer Combat service support, and command and control), projected enemy actions and decision points to be made at certain H hours. The synchronization matrix provides a highly visible, clear method for ensuring that planners address all operating systems when they are developing courses of action and recording the results of war gaming. The matrix clearly shows the relationships between activities, units, support functions, and key events. The matrix supports the staff in adjusting activities based on the commander's guidance and intent and the enemy's most likely courses of action.

COA Analysis/COA Comparison/COA Approval: The *COA analysis* identifies which COA accomplishes the mission with minimum casualties while best positioning the force to retain the initiative for future operations. The COA analysis is accomplished using war gaming. The war game is a disciplined process, with rules and steps, which attempts to visualize the flow of battle in each of the COAs. During the war game, the staff takes a COA and begins to develop a detailed plan, while determining the strengths and weaknesses of each COA. War gaming tests a COA or improves a developed COA.

The judge advocate should be an active participant in the war gaming process. Such participation will not only increase the judge advocate's knowledge of the military art and operational planning, but other legal issues will present themselves as the staff wargames each COA. For example, during the war game the staff member playing the part of the opposing force reacts to a U.S. air assault deep behind his lines by using poison gas on the landing zone. Suddenly, a heretofore unplanned legal issue is presented to the staff and the judge advocate is given the opportunity to resolve it before a COA is decided upon.

The *COA comparison* starts with each BOS representative staff officer analyzing and evaluating the advantages and disadvantages of each COA from his BOS's perspective. Each staff member presents his findings for the other's consideration. Each representative of the BOS (maneuver, fires, intelligence, ADA, mobility/countermobility, combat service support, command and control) will rate each of the COAs according to how well his system can support it. From these numerical ratings, a decision matrix will be assembled where each COA is compared for supportability from each of the BOSs. After completing the matrix and the analysis, the staff identifies its preferred COA and makes a recommendation to the commander.

Although the judge advocate is not included as one of the BOS's representatives, his input before this phase is crucial. One of the original COAs may have been insupportable from a legal standpoint. For example, COA 1 may rely on the use of RCAs (without NCA approval) for the suppression of enemy air defense (SEAD) on the drop zone before the planned airborne assault. In such a case, the judge advocate must identify such critical problems during the COA development—before the staff spends precious man hours and resources planning it.

After the decision briefing, the commander decides on the COA he or she believes to be the most advantageous. If he rejects all developed COAs, the staff will have to start the process all over again. If the commander modifies a proposed COA or gives the staff an entirely different one, the staff must war-game the revised or new one to derive the products that result from the war-game process. Based on the commander's decision, the staff immediately issues a warning order with essential information so that subordinate units can refine their plans.

Time		-18 hours	-14 hours	-12 hours
Enemy Action		Enemy monitors movement Continue deep preparation		
Decision Points		Initiate movement AA ROSE		
Maneuver	Deep			
	Security	Recon secures routes	Cav prepares to screen north flank	
	Close	1 Bde moves on routes 1 & 2		
	Reserve	3 Bde moves on routes 1 & 2		
	Rear			
Air Defense		Weapons HOLD		Weapons TIGHT
Fire Support				
EW		Confirm second belt and RAG position		Confirm reserve position
Engineer		Route maintenance		
CSS	Man	Replacements held at division		
	Arm			
	Fix	Cannibalization authorized at DS level	Establish Div main CP	
	Fuel			
	Move	Initiate movement from AA Rose		
	Sustain			
CP		TAC CP with lead Bde		

Figure 2. Example of a synchronization matrix.

Orders Production: Based on the commander's decision and final guidance, the staff refines the COA and completes the plan and prepares to issue the order. The staff prepares the order or plan to implement the selected COA by turning it into a clear, concise concept of operations, a scheme of maneuver, and required fire support.

The G-3 plans officers (or the S-3 at the BDE level) may ask the judge advocate to read the finished order to see if it meets general standards of clarity, internal consistency, and completeness. The judge advocate should seek every opportunity to serve in such a capacity since it demonstrates that he is considered "one of the team." Increasingly, judge advocates serve as "the honest broker" in the review of plans and orders. Good advice to judge advocates serving in such a role is to: (1) look at the ENTIRE PLAN—both of your unit and of the higher unit; (2) READ AND STUDY the Mission Statement and Commander's Intent (is the statement and intent clear - does it sufficiently define the parameters

of the operation, while affording the requisite flexibility to the unit); (3) carefully review the parts of the plan which discuss Civil Affairs, Military Police, Intelligence (particularly low level sources), Acquisition, and Funding. Look to the command's authority to undertake proposed actions. Consider:

1. **Express authority** (e.g., in the Mission Statement).
2. **Implied authority** (e.g., authority to detain civilians implied from the mission to “restore order”; authority to undertake minor, short term repairs to a civilian power plant, thereby enabling lights to operate, implied from the mission to “enhance security and restore civil order.”)
3. **Inherent authority** (e.g., authority—always—to protect the force.)
4. Watch out for “**mission creep**”: help the commander stay in his/her lane. When dealing with DoS (through, most often, the Country Team), do not presume DoD/DoS synchronization. Protect the commander, and use technical channel communications and resources. Remember that “color of money” issues are important—particularly in post-combat stability operations and MOOTW. See the chapters on Fiscal Law and Security Assistance of this Handbook.

When called upon to proofread an order, try to use the following checklist:

- Does the order use doctrinally established terms?
- Is there sufficient detail to permit subordinate commanders to accomplish the mission without further instructions?
- Is there sufficient detail for subordinate commanders to know what other units are doing?
- Does the order focus on essential tasks?
- Does the order limit the initiative of subordinate commander, i.e., does it prescribe details of execution that lie within their province?
- Does the order avoid qualified directives such as “try to hold” or “as far as possible”?
- After finishing the order, does the reader have a grasp of the “big picture” of the operation?

OPERATIONS PLANS AND ORDERS IN THE JOINT ARENA

The JTF OPLAN in Context

Almost all future contingency operations will be based on the joint task force. The joint task force (JTF) will consist of combat and support units from all the services. The JTF will have one commander who will be responsible for coordinating the complex interplay between the services to produce the maximum combat power. The JTF OPLAN is the mechanism by which this objective is planned – it does not exist in a vacuum. As a supporting plan to the OPLAN of a particular Unified Command, it must reflect the guidance contained in that plan and be structured in such a way as to assist in the overall accomplishment of the Unified Command mission.

Unified Command OPLANs are the mechanisms through which CINCs will accomplish the national security objectives and derived military objectives and tasks assigned them in Vol. I of the Joint Strategic Capabilities Plan (JSCP). This is one of the principal Joint Strategic Planning System (JSPS) documents prepared by the CJCS for the purpose of translating national security policy (formulated by the National Security Counsel (NSC)) into strategic guidance, direction, and objectives for operational planning by Unified and Specified commands.

The JSCP, Vol. I and II (Vol. II identifies the major combat forces assigned a CINC, for planning purposes, in the development of his OPLAN) triggers the Joint Operations Planning and Execution System (JOPES).¹ JOPES applies to those OPLANS prepared by CINCs in response to the missions assigned them by the CJCS in the JSCP, Vol. I. CJCS Manual 3122.03 (1 June 1996) provides the Planning Formats and Guidance needed to comply with the JOPES process. **Above all else, JOPES provides a standardized process that is uniform, predictable, and thorough. The judge advocate should be familiar with the JOPES format for constructing OPLANS because the relevant information will be located in standardized locations through the plan. For example, the legal annex will always be Appendix 4 to Annex E of each plan to the judge advocate picks up. The Rules of Engagement are always Appendix 8, Annex C. This chapter includes every appendix and annex required by JOPES in their correct order and substance.**

JOPES provides the guidance and procedures for use in the development, coordination, dissemination, review, and approval of Unified Command joint operations plans. It also prescribes standard formats and the minimum content for OPLANS. Planning for military operations is conducted deliberately, or in the crisis action mode.

The Deliberate Planning Process, most often used in developing Unified Command CONPLANS or OPLANS, as well as supporting plans, involves 5 distinct phases: (1) Initiation, (2) Concept Development, (3) Plan Development, (4) Plan Review, and (5) Supporting Plans. The Crisis Action Planning Process begins in response to a developing situation that may require the deployment of military forces. Crisis Action planning produces an OPORD for a particular mission, and includes similar phases: (1) Situation Development, (2) Crisis Assessment, (3) Course of Action (COA) Development, (4) COA Selection, (5) Execution Planning, and (6) Execution. Military planners will often use a CONPLAN or OPLAN as the starting point for a Crisis Action Plan.²

Reviewing Plans and Mission Orders

Types of Plans and Mission Orders. Units plan for specific contingencies and missions. In an actual deployment, operations or concept plans (OPLANS/CONPLANS) become operations orders (OPORD) which direct how to accomplish a particular mission. Divisions and higher-level units prepare OPLANS and CONPLANS days, months, or years prior to deployment. The detailed plans, in conjunction with the forces assigned or apportioned to the CINC in the JSCP, enable the staff to develop the Time Phased Force Deployment Data (TPFDD). The TPFDD is a sequenced plan that details the flow of forces into theater using available lift or transport assets. The TPFDD determines the priority and sequence of units the judge advocate must ensure are trained in the ROE, and will impact on what legal assets are available in theater in when they are available.

Responsibility for Plans and Order Review. Operational law attorneys must periodically review all existing OPLANS and CONPLANS. Many divisions utilize brigade trial counsel to review plans and orders in their units. Regardless of who conducts the review, the responsibility for the review rests with the SJA. The plans review process must be continuous, with the SJA's representative in constant coordination with the G-3 Plans (or J-3 if the judge advocate is working with a Joint Task Force) element. The SJA's representative must be in the decision-making cycle not only of his unit, but of the next higher unit as well. Some units have assigned an operational lawyer to work in the G-3 Plans shop for several days each week. The key point is that the judge advocate must be a member of the "plans team," a "known commodity," not an interloper in the operations planning process.

At brigade level and below, written and oral mission orders are often prepared and executed within hours. All plans and orders identify the **SITUATION**, the **MISSION**, how the mission will be executed (**EXECUTION**), how the mission will be supported (**SERVICE SUPPORT**), and how the mission will be controlled (**COMMAND AND SIGNAL**). Additional details appear in annexes, appendices, and tabs following the basic plan or order. Plan for change—orders will probably be modified through Fragmentary Orders (FRAGOs).

The OPLAN Review Process. As noted in the Preface of the OPLAN Checklist, the Checklist uses the JOPES format. Though structured for the review of OPLANS at higher echelons, the Checklist offers an extensive list of issues to look for in plans and mission orders at all levels of command. Judge advocates with more experience than time may prefer to

¹ See JOINT PUB. 5-03.2, JOINT OPERATIONS PLANNING AND EXECUTION SYSTEM, VOL. II, PLANNING AND EXECUTION FORMATS AND GUIDANCE (10 Mar 1992).

² See JOINT PUB. 5-0, DOCTRINE FOR PLANNING JOINT OPERATIONS (13 April 1995).

use a shorthand approach to OPLAN/OPORD Review. The FAST-J method, which precedes the OPLAN Checklist, is a good generalized mechanism for OPLAN/OPORD review.

Developing the Legal Appendix to an OPLAN. A detailed and easily understood Legal Appendix to an OPLAN/OPORD, complete with relevant references, is essential. Specific Legal Annexes or Appendices must be tailored to each operation, and developed on the basis of individual mission statements and force composition. Pay particular attention to tailoring a “General Order Number 1” to each operation. What worked—and made sense—in SWA may not be prudent for a UN peacekeeping operation, for example. Appendix A to this chapter includes relevant JOPES formats, as well as an example of Appendix 4 to Annex E [Legal] for the U.S. Forces Haiti, the U.S. component of the UN Mission in Haiti (UNMIH), FRAGO 16 of OPLAN 2380 (Uphold Democracy).

Personal Preparation for Deployment. Deploying judge advocates must ensure that their personal affairs are up-to-date and that they are prepared for deployment. Personal equipment, TA-50, hygiene materials, and clothing should be assembled upon assignment to the unit, and continually maintained in a state of readiness for deployment. Procedures for drawing/securing weapons and protective masks should be predetermined. Inquire whether additional equipment or special clothing will be required, what additional documents (such as TOC passes and meal cards) may be needed, and how they will be obtained. Develop a plan to gain interim top secret clearance for all brigade legal advisors and other judge advocates with a need to see top secret materials. Annual weapons qualification with assigned weapon, and military skills proficiency and physical fitness, must be taken seriously! SJAs and other leaders must train subordinate judge advocates on preparation for, and execution of, deployment.

Preparation of the Legal Deployment Package. A deployment package includes tactical and office equipment, office supplies, and reference materials. This equipment should be packed and ready for deployment at all times. Store deployment materials in footlockers or other containers and keep them up to date to prevent delays during the deployment sequence. Check the contents and condition of the containers according to a schedule. Determine how the deployment package can be palletized. Have load plans for vehicles. Know how to prepare vehicles and equipment for air movement or shipment. In most units, the SJA deployment package is the responsibility of the Operational Law Attorney, but the Legal Administrator and the Chief Legal NCO must participate in the preparation and care of the deployment package. Specifically, NCOs should take charge of palletizing and preparing for—and executing—movement. Train on executing the office deployment plan. Take the deployment package to the field. Tailor the materials for your unit’s AOR and likely missions. Consider packing a manual typewriter, extension cords, transformers, and toilet paper in addition to traditional legal and office materials. A mission-specific review of essential materials must be done as early as possible once deployment is ordered. SOFAs, if applicable, Country Law and Area Studies, and publications of the unified command having responsibility for the country in which operations will occur should made a part of the deployment package.

Deployment SOPs. Deployable SJA offices must maintain an up-to-date deployment SOP, checklists and “Smart,” or Continuity, Books. Corps and Division SOPs will necessarily vary as a result of differences in missions and force composition. To the extent possible, SOPs for SJA offices operating in the same theater should be coordinated for the purpose of ensuring uniformity and consistency of approach toward the provision of legal services to combat commanders. Deployment SOPs must be exercised and refined periodically.

THE FAST - J METHOD FOR OPLAN/OPORD REVIEW

- | | |
|--|---|
| <p>1. FORCE.
When and what do we shoot?
Mission?
Commander’s Intent?
ROE?</p> | <p>2. AUTHORITY
To conduct certain missions
- “Law enforcement”
- Training (FMS, FAA)
- HCA
To capture/detain locals</p> |
|--|---|

3. **STATUS**

Ours

- Law of the Flag (combat or vacuum [Somalia, e.g.])
- SOFA
- Other (Admin. & Tech. P. & I. through Diplomatic Note, e.g.)

Theirs

- Status
- Treatment
- Disposition

5. **JUSTICE (“Job One”)**

Jurisdiction (Joint or service specific)

Convening Authorities

Control Measures (GO # 1)

TDS, MJ Support

4. **THINGS**

Buying (Contracting)

Breaking (Claims)

Blowing Up (Targeting)

APPENDIX

FORMATS FOR LEGAL APPENDICES

NOTE: THERE ARE ADDITIONAL SAMPLE LEGAL ANNEXES CONTAINED IN THE JAGCNET DATABASE.
[See JOPEs Volume II, JEL Library]

(Standardized JOPEs Format, **Rules of Engagement Appendix**)

CLASSIFICATION

HEADQUARTERS,
U.S. EUROPEAN COMMAND APO AE 09128 28
February 1992

APPENDIX 8 TO ANNEX C TO USCINCEUR OPLAN 4999-92 (U) RULES OF ENGAGEMENT (U)

() REFERENCES: List DoD Directives, rules of engagement (ROE) issued by the Chairman, Joint Chiefs of Staff, and existing and proposed ROE of the supported commander to be applied during the conduct of operations in support of this OPLAN.

1. () Situation

a. () General. Describe the general situation anticipated at the time implementation of the plan is directed. Provide all information needed to give subordinate units accurate insight concerning the contemplated ROE.

b. () Enemy. Refer to Annex B, Intelligence. Describe enemy capabilities, tactics, techniques, and probable COAs that may affect existing or proposed ROE in relation to accomplishment of the U.S. mission.

c. () Friendly. State in separate subparagraphs the friendly forces that will require individual ROE to accomplish their mission; e.g., air, land, sea, SO, hot pursuit. Where appropriate, state the specific ROE to be applied.

d. () Assumptions. List all assumptions not included in the Basic Plan on which ROE are based.

2. () Mission. State the mission in such a way that ROE will include provisions for conducting military operations in accordance with the Laws of War.

3. () Execution

a. () Concept of Operation

(1) () General. Summarize the intended COA and state the general application of ROE in support thereof.

Indicate the length of time (hours, days, or event) the ROE will remain in effect.

(2) () U.S. National Policies. Refer to appropriate official U.S. policy statements and documents published by the command pertaining to ROE and the Laws of War. Include reference to ROE for allied forces when their participation can be expected. When desired, specific guidance may be included in a tab. Refer to a separate list of NO STRIKE targets in Appendix 4 to Annex B, which may include facilities afforded special protection under international law.

b. () Tasks. Provide guidance for development and approval of ROE prepared by subordinate units.

c. () Coordinating Instructions. Include, at a minimum:

(1) () Coordination of ROE with adjacent commands, friendly forces, appropriate second-country forces, neutral countries, appropriate civilian agencies, and Department of State elements.

(2) () Dissemination of ROE.

(3) () Provision of ROE to augmentation forces of other commanders.

4. () Administration. Provide requirements for special reports.

5. () Command and Control. Refer to the appropriate section of Annex K. Provide pertinent extracts of information required to support the Basic Plan, including:

a. () Identification, friend or foe, or neutral (IFFN) ROE policy.

b. () Relation of ROE to use of code words.

c. () Specific geographic boundaries or control measures where ROE are applicable.

d. () Special systems and procedures applicable to ROE.

Appendix 8 to Annex C

CLASSIFICATION

(Standardized JOPES Format, **Enemy Prisoners of War, Civilian Internees, and Other Detained Persons Appendix**)

CLASSIFICATION

HEADQUARTERS,
U.S. EUROPEAN COMMAND APO AE 09128 28
February 1992

APPENDIX 1 TO ANNEX E TO USCINCEUR OPLAN 4999-92 (U) ENEMY PRISONERS OF WAR, CIVILIAN INTERNEES, AND OTHER DETAINED PERSONS (U)

() REFERENCES: Cite the documents necessary for a complete understanding of this appendix.

1. () General

- a. () Purpose. State the purpose of the appendix.
- b. () Scope. Indicate the specific activities (e.g., collection, processing, evacuation) applicable to the OPLAN and the extent to which they pertain to EPWs, CIs, and DETs.
- c. () Policy. Delineate the general policy for accomplishing EPW, CI, and DET activities by the Service components and other supporting commands.

2. () Situation. Identify any significant factors that may influence EPW, CI, and DET activities in support of the OPLAN. The following subparagraphs may be used to the extent necessary.

- a. () Enemy. Refer to Annex B, Intelligence. Assess the impact of enemy capabilities and probable COAs on EPW, CI, and DET activities and summarize the enemy military, paramilitary, and civilian forces and resources expected to be encountered.
- b. () Friendly. Include any non-U.S. military forces and U.S. civilian agencies that will augment assigned forces for EPW, CI, and DET activities.

3. () Execution

- a. () Concept of Operations. State the general concept of EPW, CI, and DET activities in support of the OPLAN.
- b. () Assignments of Tasks. In separate numbered subparagraphs for each applicable component, identify specific responsibilities for EPW, CI, and DET activities. Indicate what component is responsible for as many of the following as applicable:

(1) () Developing, in coordination with intelligence planners, gross time-phased estimates of the number of EPWs, CIs, and Des. These estimates should be provided to medical planners.

(2) () Developing overall in-theater policy and coordinating matters pertaining to EPW, CI, and DET activities.

(3) () Establishing and operating collection points and processing centers.

(4) () Establishing and operating EPW and CI camps.

(5) () Activating and operating EPW information centers and branches.

c. () Coordinating Instructions. Include general instructions applicable to two or more components, such as:

(1) () Agreements with the host country, allied forces, and U.S. Government and non-Government agencies.

(2) () Relationships with the ICRC or other humanitarian organizations.

(3) () Arrangements for transfer of EPWs, CIs, and DETs between Services or acceptance of EPWs, CIs, and DETs from allied forces.

4. () Special Guidance. Provide guidance not discussed elsewhere concerning the collection, safeguarding, processing, evacuation, treatment, and discipline of EPWs and all personnel detained or captured. Include as many of the following as applicable:

a. () Handling, processing, and evacuating EPWs at the capture point. Discuss assignment of POW escorts and their responsibilities (escorts should bring personal effects of POW's to include uniforms, undergarments, civilian clothes). Discuss the requirements and assignment of a single point of contact to coordinate all return and administrative requirements of repatriated POW's.

b. () Accounting for EPWs, CIs, and DETs.

c. () Interrogating and exploiting EPWs. (Cross-reference to Annex B, Intelligence, and Appendix 5. Human Resource Intelligence.)

d. () Granting of legal status.

- e. () EPW, CI, and DET advisory assistance programs.
- f. () Transferring of EPWs, CIs, and DETs to another detaining power.
- g. () Investigating, reporting, and adjudicating alleged violations of the laws of war as applicable to detained persons.
- 5. () Administration and Logistics. Provide a concept for furnishing logistic and administrative support for EPW, CI, and DET activities. As appropriate, include guidance on the following:
 - a. () Accounting for personal property and deceased EPWs, CIs, and DETs. (Cross-reference to Appendix 2, Mortuary Services, to Annex D, Logistics.)
 - b. () EPW, CI, and DET documentation and records.
 - c. () Medical care and treatment. (Cross-reference to Annex Q).
 - d. () EPW canteens and welfare funds.
 - e. () EPW and CI labor programs.
- 6. () Command and Control. Discuss C3 systems support and procedures necessary to conduct EPW, CI, and DET activities. Refer to appropriate sections of Annex K.
- 7. () Reports. Indicate reports required by appropriate reference(s).

Appendix 1 to Annex E

CLASSIFICATION

(Standardized JOPES Format, **Legal Appendix**)

CLASSIFICATION

HEADQUARTERS,
U.S. EUROPEAN COMMAND APO AE 09128 28
February 1992

APPENDIX 4 TO ANNEX E TO USCINCEUR OPLAN 4999-92 (U) LEGAL (U)

- () REFERENCES: Cite the documents necessary for a complete understanding of this appendix.
- 1. () General Guidance. See appropriate references, including inter-Service support agreements.
 - 2. () Specific Guidance. Coordinate with supporting commanders and Service component commanders on the items listed below. For each subheading, state policies, assign responsibilities, and cite applicable references and inter-Service support agreements:
 - a. () Claims.
 - b. () International legal considerations.
 - c. () Legal assistance.
 - d. () Military justice.
 - e. () Reporting violations of the law of war.
 - f. () Captured weapons, war trophies, documents, and equipment.
 - g. () Host-nation support.
 - h. () Legal review of rules of engagement.
 - i. () Law enforcement and regulatory functions.
 - j. () Component and supporting commanders' and staff responsibilities.
 - k. () Acquisitions during combat or military operations.
 - l. () International agreements and congressional enactments.
 - m. () Nuclear, biological, and chemical weapons.
 - n. () Targeting.
 - o. () Enemy prisoners of war and detainees.
 - p. () Interaction with the International Committee of the Red Cross (ICRC).

Appendix 4 to Annex E

CLASSIFICATION

SAMPLE LEGAL APPENDIX

APPENDIX 4 TO ANNEX E TO USFORHAITI OPORD(U) LEGAL (U)

(U) REFERENCES:

- a. UN Charter (U)
- b. UN Security Council Resolutions 867 (1993), 905, 917, 933, 940, 949, 964 (1994), 975 (1995)
- c. Multinational Force (MNF) Status of Forces Agreement, dated 8 Dec 1994 (U)
- d. UN Status of Mission Agreement, dated XXXXXXXXX (U)
- e. Agreement for Support of UNMIH, dated 19 Sep 1994 (U)
- f. Governors Island Agreement of 3 July 1993 (U)
- g. UN Participation Act (UNPA), 22 U.S.C. § 287 (U)
- h. Foreign Assistance Act (FAA), 22 U.S.C. § 2151-2429
- i. Joint Pub 0-2, Unified Action Armed Forces (UNAAF) (U)
- j. U.S.-Haiti, Bilateral Mutual Defense Assistance Agreement, dated 28 Jan 1955 (U)
- k. International Agreement Negotiation: DoD Directive 5530.3, and CINCUSACOM 5711.1A (U)
- l. Service regulations on Legal Assistance: AFI 51-504, AR 27-3, JAGMAN (USN/USMC) (U)
- m. Uniform Code of Military Justice and Manual for Courts-Martial, United States, 1984 (U)
- n. Service regulations on Military Justice: AFI 51-201, AFI 51-202, AR 27-10, JAGMAN (U)
- o. CINCUSACOMINST 5710.3A, Political Asylum (U)
- p. Claims: AR 27-20, DA Pam 27-162, JAGMAN, JAGINST 5890.1 AFM 112-1B, DoD Directive 5515.8 (U)
- q. International Law: DA Pam 27-1 (Treaties Governing Land Warfare), DA FM 27-10 (Law of Land Warfare), NWP 9 (Rev. A)/FMFM 1-10 (Commander's Handbook on the Law of Naval Operations), AFP 110-20 (Selected International Agreements), AFP 110-31 (International Law-The Conduct of Armed Conflict and Air Operations), AFP 110-34 (International Law-Commander's Guide to the Law of Armed Conflict) (U)
- r. Control and Registration of War Trophy Firearms: AR 608-4, OPNAVINST 3460.7A, AFR 125-13, MCO 5800.6A (U)

1. a. (U) **General Guidance.** JTF USFORHAITI will conduct operations in Haiti as the U.S. military component of the United Nations Mission in Haiti (UNMIH), OPCON to the Commander, UNMIH. Reference (a) establishes the general legal foundation for peacekeeping operations (Chapter VI) and peace enforcement operations (Chapter VII). References (b), (d), (e), and (f) are the specific authorizations for the UNMIH. References (g) and (h) contain statutory authority for U.S. manpower and logistics contributions to United Nations operations. Reference (i) establishes the general policy for addressing legal issues of U.S. joint service operations.

- b. (U) The JTF SJA will:
 - (1) Provide legal advice to JTF and Staff.
 - (2) Serve as a single point of contact for operational legal matters affecting forces under the operational command of JTF within Haiti.
 - (3) Monitor foreign criminal jurisdiction matters involving U.S. personnel within Haiti.
 - (4) Ensure all plans, rules of engagement (ROE), policies, and directives, are consistent with the DoD Law of War Program and domestic and international law.
 - (5) Monitor foreign claims activities within country.

2. (U) **Specific Guidance.**

- a. (U) **Claims.**
 - (1) (U) U.S. Claims. The Department of the Army (DA) has been assigned Executive Agency, UP ref (p), for claims arising from U.S. operations in Haiti. An Army Judge Advocate will be appointed as a Foreign Claims Commission to adjudicate U.S. claims, where possible, and forward them to DA. Any residual claims resulting from U.S. operations should be addressed through the SJA, USFORHAITI, to the Chief, Foreign Claims Branch, U.S. Army Claims Service, Ft. Meade, Maryland, DSN 923-7009, Ext. 255.
 - (2) (U) UN Claims. Per ref (e), the UN has held the United States and all U.S. members of the UNMIH harmless from all claims arising from acts or omissions committed by U.S. personnel serving with the UNMIH. Commanding officers of U.S. personnel assigned to the UNMIH will be sensitive to any damage caused by members of their command. Claims arising from UN operations will be submitted per UN direction, in accordance with the UN

claims procedures, ref (d), and UN directives.

(3) (U) Claims investigations. Any injury of a civilian or damage of personal property will be reported to the SJA, JTF USFORHAITI, immediately. JTF USFORHAITI will coordinate with the commanding officer of the service member involved in any alleged claim to ensure that an officer from that service is appointed to conduct a thorough investigation into the matter. All claims investigations will be promptly completed and forwarded to the SJA for review. Information copies will be forwarded to the SJA, U.S. Atlantic Command (USACOM). Unless otherwise directed, the SJA, JTF USFORHAITI, will review the investigation, and after approval by JTF USFORHAITI, forward the report through the appropriate chain of command for adjudication and payment.

b. (U) International Legal Considerations.

(1) (U) Status of Forces. UP of para. 52, of ref (c), any residual MNF personnel in country after transition to UNMIH will be covered by the MNF SOFA, ref (c). Reference (d) details the status of UNMIH, its component personnel, and assets. All questions regarding status and privileges should be referred to the Legal Advisor, Commander, UNMIH. Any U.S. bilateral security assistance elements will be given administrative and technical status of embassy personnel, as provided for in Article V of ref (j), upon negotiation of an implementing agreement.

(2) (U) Peacekeeping Operations. The UNMIH is a peacekeeping operation as described in Chapter VI, reference (a). It is organized under the command of the United Nations, exercised on behalf of the Security Council and the Secretary-General by a Special Representative. Both a military and a civilian component report to the Special Representative. Logistics support may be provided in part by one or more contractors. Participating nations give operational control of their military component forces to the Military Component Commander, UNMIH, but retain all other functions of command.

(3) (U) Jurisdiction Over Non-UNMIH Personnel. Per ref (d), jurisdiction over non-UNMIH personnel remains with the GOH.

(4) (U) Political asylum. UNMIH personnel are not authorized to grant political asylum. U.S. personnel should forward requests for asylum in the U.S. by immediate message to CINCUSACOM and refer applicant to the U.S. diplomatic mission. Temporary refuge will be granted only if necessary to protect human life. Reference (o) provides detailed information concerning political asylum and temporary refuge.

c. (U) Legal Assistance. JTF USFORHAITI will make arrangements for legal assistance for U.S. personnel of the UNMIH. U.S. service components should ensure maximum use of pre-deployment screening for wills and powers of attorney to reduce demands for emergency legal assistance. Component commanders will make arrangements for legal assistance for personnel assigned or attached to their respective forces. Use inter-service support to maximum extent. Ref (l) applies.

d. (U) Military Justice.

(1) (U) The inherent authority and responsibilities for discipline of the commanders of U.S. military personnel assigned to UNMIH, described in references (i), (m) and (n), remain in effect.

(2) (U) Courts-martial and nonjudicial punishment are the responsibility of service component commands, IAW service regulations.

(3) (U) Component commanders will establish appropriate arrangements for disciplinary jurisdiction, including attachment orders for units and individuals, where appropriate.

(4) (U) Immediately report to component and the JTF SJA all incidents in which foreign civil authorities attempt to assume jurisdiction over U.S. forces. The SJA, JTF USFORHAITI, will coordinate all military justice actions with the SJA, USACOM.

(5) (U) Jurisdiction. Under the privileges and immunities enjoyed by the UN, criminal and civil jurisdiction over U.S. members of UNMIH resides solely with the United States. Detailed guidance on the jurisdictional status of the UNMIH is contained in ref (d).

(6) (U) Criminal investigations. JTF USFORHAITI will coordinate with the commanding officer of any U.S. service member who is allegedly involved in an act of criminal misconduct to ensure that an official from the appropriate investigative service is appointed to conduct a thorough investigation into the matter. Allegations against non-military U.S. nationals should be forwarded to an appropriate investigative service after consultation with the SJA, JTF USFORHAITI. Allegations against non-U.S. persons will be forwarded to the UNMIH Special Representative for proper disposition. Completed reports of investigation that involve U.S. nationals shall be reviewed by the SJA, approved by JTF USFORHAITI, and forwarded to the appropriate authority, with copies to the SJA, USACOM, and the UNMIH Special Representative.

e. (U) Reporting violations of the Law of War and ROE.

(1) (U) Acts of violence. UNMIH personnel will report all acts of violence, to include homicides, assaults, rapes, robberies, abductions, and instances of mayhem or mass disorder, immediately to their commanding officer. Those officers shall immediately pass reports to JTF USFORHAITI and the UNMIH Special Representative. UNMIH personnel

will interfere with the actions of Haitian military or police personnel only as authorized by the rules of engagement.

(2) (U) Law of War. Ref (d) requires that military personnel assigned to UNMIH apply the minimum standards of the Law of War contained in ref (q). Component commanders who receive information concerning a possible violation of the Law War and ROE will:

(A) (U) Conduct a preliminary inquiry to determine whether violations were committed by or against U.S. personnel.

(B) (U) Cooperate with appropriate allied authorities should their personnel be involved.

(C) (U) Report all suspected violations to the JTF SJA, as well as through service component channels, according to service regulations, utilizing OPREP-3 procedures.

(D) (U) When U.S. personnel are involved as either victims or perpetrators, or when directed by CINCUSACOM, conduct a complete investigation, preserve all evidence of the suspected violation, and take appropriate corrective and/or disciplinary action.

(E) (U) Provide copies of all OPREPs, initial reports and reports of investigation to SJA, JTF USFORHAITI, and SJA, USACOM.

f. (U) Captured Weapons, war trophies, documents, and equipment. Component commanders will establish immediate accountability for all captured property, including weapons, trophies, documents and equipment. See refs (q) and (r), and MNF Guidelines, for disposition of captured public and private property remaining from MNF operations. UN directives apply to any items seized during the duration of UNMIH.

g. (U) Host Nation Support and Fiscal Authority.

(1) (U) Refs (c) and (d) contain basic provisions for host nation support, which is acquired by bilateral logistics agreements or off-shore contracts.

(2) (U) Fiscal authority is always available for U.S. support to U.S. forces, even when they are assigned a UN mission. UN operational requirements, even those involving U.S. personnel, should be supported under the authority discussed below. However, logistics support for U.S. forces which is above and beyond the capacity of UN logistics operations, and determined by the command to be essential to the sustainment of U.S. forces, is authorized under Article II of the U.S. Constitution and 22 U.S.C. § 2261.

(3) (U) Authority for support to other nations participating in MNF, provided under provisions of sections 506 (Drawdown), 451 and 632 (Peacekeeping) of the FAA [ref (h)], will terminate upon transition of those contingents to UNMIH.

(4) (U) U.S. support to UN operational requirements, the UNMIH staff, or UNMIH contingent nations should be effected pursuant to ref (e). Ref (e) and section 2357 of ref (h) require a request in writing from the UN, with a commitment for reimbursement. UN procedures should be used to ensure proper documentation of the request, and proper accounting of funds for reimbursement. Support for the UN may also be provided under separate authority, pursuant to section 7 of the UN Participation Act (22 U.S.C. § 287), where reimbursement may be waived by the NCA.

(5) (U) Economy Act reimbursement from DoS, cross-servicing agreements, separate 607 agreements with participating countries, and other alternate authorities may be relied on to support third countries in the absence of a UN request. Cross-servicing agreements are currently in effect with several nations participating in UNMIH. Copies of the agreements can be obtained from J4 or SJA, USACOM. As a last resort, in cases of an emergency request for food or shelter from other contingents, the President's Article II authority may be relied on to support a DoD response.

h. (U) Legal Review of the Rules of Engagement (ROE). UNMIH ROE are in effect as of 31 March 95. In cases not covered by the UNMIH ROE, U.S. Standing ROE (SROE) are in effect. U.S. MNF forces remaining in Haiti after transition to UNMIH will continue to operate under MNF ROE until redeployment to home station. The Commander, UNMIH, may promulgate further UN ROE policies. The SJA should review any policies or proposed changes to the UNMIH ROE, to ensure compliance with PDD 25 and other U.S. law and policy. Any modifications to the UNMIH ROE that will effect U.S. forces should be coordinated with USACOM prior to implementation.

i. (U) Law Enforcement and Regulatory Functions. All MNF General Orders are in effect until 31 March; they remain in effect for residual MNF forces in country. Commander, USFORHAITI may promulgate appropriate disciplinary regulations for U.S. forces in Haiti.

j. (U) Component and Supporting Commanders' and Staff Responsibilities: Subordinate component commanders will:

(1) (U) Ensure that all plans, orders, target lists, policies, and procedures comply with applicable law and policy, including the Law of War and ROE.

(2) (U) Report on all legal issues of joint origin or that effect the military effectiveness, mission accomplishment, or external relations of USFORHAITI to the JTF SJA.

(3) (U) Provide a weekly status of general legal operations for their component to the JTF SJA. This report should include, at a minimum, the following information:

(A) (U) International law - incidents effecting any bilateral or UN agreements, a potential violation of the law of war or ROE, and diplomatic incidents involving U.S. forces the forces, government agents, or nationals of another country.

(B) (U) Military justice - incidents which may give rise to disciplinary action under the UCMJ, as well as the final disposition of such actions, and any U.S. forces in pretrial confinement. Immediately report serious incidents.

(C) (U) Claims - any incidents which may give rise to a claim against the United States or the UN.

k. (U) Acquisitions During Combat or Military Operations.

(1)(U) U.S. forces will acquire most goods and services in Haiti in accordance with UN procedures for contracting, per the authority discussed in paragraph g, above.

(2) (U) Goods and services to satisfy U.S.-specific requirements will be obtained in accordance with applicable U.S. and host nation laws, treaties, international agreements, and directives. Commander, USFORHAITI, does not have the authority to waive any of the statutory or regulatory requirements contained in the Federal Acquisition Regulation (FAR).

(3) (U) Only contracting officers may enter into and sign contracts on behalf of the U.S. Government. Only those persons who possess valid contracting warrants may act as contracting officers and then only to the extent authorized. Only those persons who have been appointed as ordering officers by competent authority may make obligations under the terms of, or pursuant to contracts.

(4) (U) Avoid unauthorized commitments. Although an unauthorized commitment is not binding on the U.S. Government, in appropriate cases it may be ratified by an authorized person in accordance with the FAR provisions. Unratified unauthorized commitments are the responsibility of the person who made the commitment. In appropriate cases, such persons may also be subject to disciplinary action.

l. (U) International Agreements and Congressional Enactments. All international agreements will be in writing. Pursuant to reference (k), agreements of any kind in which the U.S. or a U.S. military component is a party require the written authorization of CINCUSACOM. Agreements made under UN authority and procedures are not affected by reference (k).

m. (U) Nuclear, Biological, and Chemical Weapons. Riot control agents are an authorized method of employing non-deadly force under the UNMIH ROE. No further U.S. authorization is required for their employment.

n. (U) Targeting. A judge advocate will review all fire support targeting lists to ensure compliance with the Law of War and ROE, and will act as a member of the JTF targeting cell.

o. (U) Detainees. [The UNMIH will exercise only that degree of control over non-UNMIH persons that is necessary to establish and maintain essential civic order. UNMIH is not tasked to perform Haitian law enforcement or judicial responsibilities.] Wherever practicable, and as soon as possible, deliver custody of non-UNMIH personnel detained for suspected offenses against UN personnel or property to official representatives of the GOH. Further guidance regarding the detention of non-UNMIH persons is contained in the UNMIH rules of engagement, and ref (d).

p. (U) Interaction with the International Committee of the Red Cross (ICRC). All interaction with non-governmental organizations (NGOs) should be accomplished through the UNMIH staff, including the civilian staff of the Special Representative. The SJA will continue to monitor all Law of War issues and provide subject matter expertise to the UNMIH staff.